

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 02-0006P  
Gross and Adjusted Gross Income Tax  
Calendar Years 1995, 1996, 1997, 1998, and 1999**

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**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer leases vending machines in Indiana and out of state. Rent paid for the leasing of the vending machines was omitted from the apportionment factors in 1995 and 1996. It was included in subsequent years. The lease income for the vending machines was reported at the low rate and was changed to the high rate in the audit report. Taxpayer understated gross income by \$102,049 in 1998 and overstated gross income by \$4,105 in 1999. The company was sold in the last quarter of the year 2000 and the tax return for that year had not been filed at date of audit.

Taxpayer filed a penalty protest letter dated November 6, 2001.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that all original returns and liabilities for the referenced audit periods were timely filed and remitted. Taxpayer further states that it did not intentionally disregard its filing responsibility and exercised ordinary business care and prudence when it prepared and filed its returns.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable

taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to remit seventy-four percent (74%) of its tax for all years at issue and has not provided reasonable cause to allow the department to waive the penalty.

### **FINDING**

Taxpayer's protest is denied.